THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.27411 OF 2005

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Dated: 23-12-2005

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Between

B. Sankaram, S/o. late Yellaya, Ex-employee,

R/o. D.No.43-18-26, Venkataraju Nagar,

Dondaparthi, Visakhapatnam.

...PETITIONER

AND

The Authorized Officer, CM (CSE),

SBI Zonal Office, Region – II,

Visakhapatnam and others.

...RESPONDENTS

ORDER:

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Petitioner seeks a Writ of Mandamus to declare the action of the first respondent in issuing the impugned possession notice dated 30.11.2005 as illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner obtained a loan from the second respondent bank and as he could not discharge the said loan, the second respondent bank filed a suit in O.S.No.50 of 2004 on the file of Senior Civil Judge, Sompeta for recovery of the said housing loan amount. During the pendency of the said suit the respondents have issued a notice dated 19.07.2005 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') calling upon the petitioner to pay the housing loan amount of

Rs.2,36,417/- within sixty days from the date of the notice.

However, the petitioner replied to the said notice on 01.08.2005 stating that the subject matter of the loan was adjusted from the provident fund of the petitioner. But without taking into account the amount paid by the petitioner, the first respondent with the help of the second respondent issued the impugned possession notice dated 30.11.2005 under Section 13(4) of the Act stating that the first respondent has taken constructive possession of the property of the petitioner.

This Court is of the opinion that when an effective alternative remedy of right to appeal to the Debts Recovery Tribunal under Section 17 of the Act is available to the petitioner, it is not just and proper to entertain the writ petition. The writ petition is accordingly dismissed with a liberty to the petitioner to avail the effective alternative remedy under Section 17 of the Act.

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V. ESWARAIAH, J

December 23, 2005

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